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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,438	12/08/2003	Martin Schnabel	CM2713Q	2354

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EXAMINER

HILL, LAURA C

ART UNIT PAPER NUMBER

3761

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/730,438

Applicant(s)

SCHNABEL ET AL.

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/16/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Absorbent Article Having Pigmented Composite Backsheet with Hunter Value.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by McCormack (WO 00/38915A1; herein 'McCormack'). Regarding claims 1-4 McCormack discloses disposable diaper 100 with absorbent core 106 positioned between liquid impermeable outer cover 102 and liquid permeable top sheet 104 (page 14, lines 23-25), wherein said outer cover 102 comprises a laminate of multilayer polymeric film 116 on body facing layer and one or more additional non-woven layers 118 on garment facing layer (page 5, lines 26-29, page 9, lines 31-35, page 10, lines 14-17, page 15, lines 11-15, figures 1-5), at least one of the film or non-woven web garment surfaces has colored pigments print-like patterns via embossments 16 (page 7, lines 2-3 and lines 20-21, page 19, lines 18-20) for improved masking of bodily fluids (page 9, lines 14-16), each of the layers of the outer cover is joined in an overlaying region (page 9,

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lines 31-36 and figure 1) wherein said outer cover 102 has Hunter L values of 73.24 to 95.52, "a values" of -10.47 to 6.18, "b values" of -23.26 to -3.86 and opacity of 33.16 to 92.75% (page 24, Table 1).

Regarding claim 6 McCormack discloses ornamental color designs 16, 116 coincide with 60% of the area covered by the absorbent core 106 (figure 5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack (WO 00/38915A1; herein 'McCormack') in view of Tao (WO 99/32164A1; herein 'Tao'). McCormack *does not expressly disclose* the ornamental color designs comprise not more than about 50% of at least one of the back sheet's two major surfaces. Tao discloses film comprising non-woven material and microporous film (page 1, lines 28-30, page 11, lines 27-31) used for diaper 50 back sheet (page 10, lines 1-3)

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having single ornamental printed design graphic 20 and said film having an "L value" of 93.46, "a value" of -0.24 and "b value" of 0.35 (page 3, lines 2-9, page 8, lines 19-21, page 13, lines 9-13), said graphic not covering more than half of the back sheet (figures 1-2). One would be motivated to modify the ornamental design of McCormack with the graphic coverage area of Tao for improved article aesthetics since both references disclose disposable wearing articles having multi-layered laminate back sheets with visually perceptible designs. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the design thus providing the aforementioned coverage percentage.

3. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack (WO 00/38915A1; herein 'McCormack'). Regarding claim 7 McCormack discloses a distance between rear waist edge and absorbent core end edge (page 14, lines 29-20 and figure 5). McCormack *does not expressly disclose* a value for this distance. The distance between rear waist edge and absorbent core end edge is a result effective variable since it is a result of the diaper overall dimensions and absorbent core dimensions. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify McCormack with the distance between rear waist edge and absorbent core end edge value, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

4. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCormack (WO 00/38915A1; herein 'McCormack') in view of Schleinz et al. (US

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5,612,118; herein 'Schleinz'). McCormack discloses printed colored films wherein color contrast can be improved by providing a multi-layer film wherein the underlying colored layer is substantially opaque (page 11, lines 14-22). McCormack *does not expressly disclose* a half-toning printing process in which one of the surfaces of the polymeric film or non-woven web that comprise the back sheet is covered with an opaque or transparent ink while a second area is covered with the same ink. **Schleinz** discloses training pant 20 having outer cover 42 comprising elasticized substrates 50,54 with a plurality of graphics 46 printed on outer surface 44 of outer cover 42 (column 3, lines 35-40 and 54-56, column 4, lines 21-26 and 40-43), said graphics printed using a semi-tone/half-toning process on two different areas of the composite outer cover 42 in order to eliminate blurred or ghost graphics (column 5, lines 15-27, column 6, lines 7-19 and 47-50, figures 1-3). One would be motivated to modify the printed graphics of McCormack with the half-toning printing process of Schleinz for improved graphic image quality since both references disclose disposable absorbent wearing articles with back sheets having printed graphics thereon. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the printed graphics and thus provide half-toning process printed graphics.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Uitenbroek (WO 96/10380A2) is cited for showing a laminate comprising a body-facing film layer 12 and garment-facing non-woven layer 14 having a different color than the first film layer for use in a diaper back sheet, a laminate opacity

of 80-90%, and light transmission value less than 40%. Rogers et al. (US 5,133,707) is cited for showing an adhesive fastener with film having embossed indicia with opacity value less than 0.55, L value = 50-75, A value = -15.9 to 52.45 and B value=-10.41 to 34.7. Hasse et al. (US 5,575,782) is cited for showing disposable training pants 20 with composite film-coated non-woven back sheet 18 with repeating printed decorative pattern 15. Schleinz et al. (US 5,458,590) is cited for showing training pant 4 comprises back sheet 6, which can be two-layered laminate that includes a non-woven fibrous web 8 joined to liquid impermeable film 14 with high abrasion resistance measured by wet crockfastness value of 4. Noda et al. (US 6,949,689) is cited for showing an absorbent article 1 with back sheet 3 comprising a laminated film and non-woven composite having a printed multicolor pattern 10, L value of 10 to 93, chroma value of 20 to 120, and light transmittance value of 40 to 83%.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill
Examiner
Art Unit 3761

LCH

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TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

Tatyana